

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

ESMELING L. BAHENA,

Plaintiff,

v.

LEMON, *et al.*,

Defendants.

Case No. 1:22-cv-01585-BAM (PC)

**ORDER DIRECTING DEFENDANT TO FILE  
RESPONSE TO PLAINTIFF’S MOTION TO  
MODIFY THE DISCOVERY AND  
SCHEDULING ORDER  
(ECF No. 76)**

**FOURTEEN (14) DAY DEADLINE**

**ORDER DIRECTING PLAINTIFF TO FILE  
NOTICE OF WITHDRAWAL OF MOTION  
TO COMPEL  
(ECF No. 70)**

**SEVEN (7) DAY DEADLINE**

Plaintiff Esmeling L. Bahena (“Plaintiff”) is a state prisoner proceeding through counsel and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint against Defendant Mendoza (“Defendant”) for excessive force and deliberate indifference to medical care in violation of the Eighth Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 40.)

On September 3, 2024, Plaintiff filed a motion to compel. (ECF No. 70.) The Court stayed briefing on the motion to compel and directed the parties to meet and confer and file a Joint Statement. (ECF No. 71.) Following an appearance by Plaintiff’s counsel and an extension of time, the parties filed a joint statement on November 8, 2024. (ECF No. 75.) According to the

1 joint statement, the parties determined the following: (1) Defendant will produce copies of  
2 Plaintiff's medical records; (2) Plaintiff will withdraw the pending motion to compel, (ECF No.  
3 70); and (3) Plaintiff will be filing an opposed motion to conduct discovery now that his counsel  
4 has entered an appearance. (*Id.*) On November 15, 2024, Plaintiff filed a motion to modify the  
5 discovery and scheduling order. (ECF No. 76.) As of the date of this order, no further filings  
6 have been received from either party.

7 Pursuant to the joint statement filed by the parties, the Court finds it appropriate to direct  
8 Plaintiff to file a notice of withdrawal of the pending motion to compel and to direct Defendant to  
9 file an opposition (or a statement of non-opposition) to Plaintiff's motion to modify the discovery  
10 and scheduling order.

11 The parties are further advised that although Plaintiff is now proceeding through counsel,  
12 briefing on future motions shall continue to follow the deadlines and procedures set forth in Local  
13 Rule 230(1), as is the Court's usual practice.

14 Accordingly, it is HEREBY ORDERED as follows:

- 15 1. Within **seven (7) days** from the date of service of this order, Plaintiff SHALL FILE a  
16 notice of withdrawal of the pending motion to compel, (ECF No. 70);
- 17 2. Within **fourteen (14) days** from the date of service of this order, Defendant SHALL FILE  
18 an opposition (or a statement of non-opposition) to Plaintiff's motion to modify the  
19 discovery and scheduling order, (ECF No. 76); and
- 20 3. Plaintiff's reply brief, if any, in support of the motion to modify the discovery and  
21 scheduling order, shall be due within **fourteen (14) days** from the date of filing of  
22 Defendant's response.

23  
24 IT IS SO ORDERED.

25 Dated: January 6, 2025

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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